

was traversed by amendment adding the phrase “wherein at least one of steps a through h is performed using a computer.” And, in fact, the aforesaid 35 U.S.C. 101 rejection must have been overcome for the present pre-allowance search and re-examination to even occur, it is respectfully submitted.

II. Rejection Under 35 U.S.C. §101

The subject application again stands rejected pursuant to 35 U.S.C. 101 under what is commonly known as a “technological arts” rejection. As stated above, it was the understanding of the undersigned that the amendment “wherein at least one of the steps of a through h is performed using a computer” traversed the subject 35 U.S.C. § 101 rejection.

Notwithstanding the above, it is respectfully submitted that the subject “technological arts” rejection is no longer appropriate pursuant to case law affirmed by the United States Patent Office. In *Ex parte Carl A. Lundgren*, the U.S. Patent and Trademark Office’s Board of Patent Appeals and Interferences (the “Board”) has ruled that a rejection of a patent application as “outside the technological arts” cannot be sustained. In its ruling, the Board considered the decision of the patent examiner rejecting under 35 U.S.C. § 101 all pending claims in an application as claiming non-statutory subject matter. The patent examiner took the position that the claims were unpatentable because they were “outside the technological arts, namely an economic theory expressed as a mathematical algorithm without the disclosure or suggestion of computer, automated means, apparatus of any kind...” **In reversing the patent examiner, the Board reviewed the case law and determined that there was no judicially recognized “outside the technological arts” rejection.** The patent application at issue claimed a “method of compensating a manager who exercises administrative control over operations of a privately

owned primary firm for the purpose of reducing the degree to which prices exceed marginal costs in an industry.” The claimed method included the steps of: “choosing an absolute performance standard from a set of absolute performance standards;” determining a relative performance measure for said primary firm based on...comparison of said primary firm measurement of absolute performance;” and “transferring compensation to said manager.”

Following the Board’s decision in *Ex parte Lundgren*, the U.S. Patent and Trademark Office has issued “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (the “Interim Guidelines”). **The Interim Guidelines explicitly reject the “technological arts” test also rejected by the Board in *Ex parte Lundgren*. The Interim Guidelines state: “USPTO personnel should no longer rely on the technological arts test to determine whether a claimed invention is directed to statutory subject matter. There [are] no other recognized exceptions to eligible subject matter other than laws of nature, natural phenomena, and abstract ideas.”**

The Interim Guidelines also reiterate that applications are not to be rejected on the basis that they claim a process performed by a machine, where some or all of the steps of the process could be carried out by the human mind. The Interim Guidelines also reiterate that it is immaterial whether some or all steps of an invention to a process may be performed by a human.

III. Rejections Under 35 U.S.C. § 103

All of the pending claims, claims 1-7, 10-18 and 21-47 stand rejected pursuant to 35 U.S.C. § 103 based on previously cited Liquidation.com, Inc. (“Liquidation”) and Food Market Exchange (“FME”) along with newly cited U.S. Patent No. 5,842,178 to Giovannoli

“(Giovannoli”). The subject Office Action admits that neither Liquidation nor FME teach or disclose the filter elements available to the seller that denies access to goods by the buyers of the subject invention.

All of independent claims 1, 10, 27 40 and 44 require:

classifying the goods according to a pre-selected set of criteria selected by the seller, the pre-selected set of criteria including data relating to buyers that are to be denied access to the goods, the data relating to buyers including at least one characteristic selected from the following categories of characteristics:

trade classification;

type of retailer; and

type of industry

The specification as originally filed provides a concise summary of one of the possible practical implementations, by non-limiting example, of the above language of the independent claims:

The system associates the seller’s buyer restrictions with the sellers’ listed goods by way of database. This is a key means by which sellers can block buyers from accessing the sellers goods listed on the system. The ability of sellers to block buyers reduces the problems of channel conflict. Sellers are able to select from a set of standardized classifications relating to all aspects of the information that the system has related to buyers pursuant to buyers information collected as set out in Figure 2.

The types of criteria from which sellers may choose relating to buyers include the following: the type of company restricted from purchasing the goods; the particular type of retailer restricted from purchasing the goods; the type of buyer in a restricted goods industry; geographical region of business, classified by continent and then by constituent countries and, if applicable, constituent regions and the name of the buyer.

The type of company restricted from purchasing the goods generally includes the following: retailers; manufacturers; importers; exporters and wholesalers.

The particular type of retailer restricted from purchasing the goods generally includes the following: mass-market discounters; drug chains; supermarkets; specialty; gift; warehouse clubs; deep-discounters and general merchandiser.

The type of buyer in a restricted goods industry includes the following: apparel and jewelry; children and hobby; domestic chemicals; electronics; food and drinks; general merchandise; health and beauty care; household; publishing; seasonal; sports and fitness and stationary and office.

Sellers may choose different sets of criteria for each good they list on the system. For example, a seller's surplus hand soap may be available to company ABC whereas the seller's surplus

dish detergent is not. Sellers may also choose to be anonymous, such that even buyers which satisfy the criteria associated with a seller's goods will not be provided with the identity of the seller.

Sellers inputted data relating to the their surplus goods, the classifications of such goods and the related buyer criteria are cross referenced within the system by way of an electronic database 7. The cross referencing permits the system to filter the listed goods in response to a buyer's queries. Without cross referencing, the system would not be able to effectively avoid channel conflict problems. Channel conflict results when retail and surplus goods buyers are selling the same good, to the same market, at the same time, but for different prices, retail and discount. Channel conflict creates significant problems for the seller of the goods at issue. Generally, the retail buyer demands to be reimbursed for the premium paid for the goods and as such the seller's profit margin is reduced. The data on the system is also stored in an indexed manner based on the cross references. As such, the data is searchable based on any piece of collected information related thereto.

The listed and cross referenced data is stored on the system in a secured manner such that only authorized buyers are granted access 9. The need to secure the data and limit access to it is critical for the success of the system. Sellers need to have

confidence that their business decisions relating to the sale of their surplus goods is not available to any buyers which do not satisfy the sellers' criteria. The data can be secured by way of limited system access which requires buyers to be authorized for access as is shown in Figure 2.

(Page 13, line 4 through page 15, line 2 of the Specification).

Hence, unlike the prior art cited, the subject invention does not provide a binary “in-or-out” approach to website access by buyers, but instead employs a heretofore unknown and unique selective functionality to buyer access of the buyer-seller website whereby a **buyer who is admitted to the website can be excluded from certain specific portions of the website** based on whether the **buyer meets the seller’s admission criteria**.

IV. A. U.S. Patent No. 5,842,178 to Giovannoli Does Not Teach Filtering By Buyers

Giovannoli is the antithesis of the subject invention. Giovannoli discloses filtering by on-line buyers, the subject invention claims filtering by on-line sellers. Giovannoli discloses a commerce web site wherein a **buyer** can filter **sellers** for the convenience of the buyer. Giovannoli specifically lists a plurality of buyer filter of seller conditions (but none for the seller) including location, language, currency, and vendor type. (See FIG. 3; column 2, lines 51-55; and column 2, line 66 through column 3, line 2).

Giovannoli is entirely silent regarding the key element of the subject invention, filtering **buyers** as opposed to **sellers**, but for a passing reference that the sellers can remove **themselves** (i.e. filter) from participation in buyers’ request for quotations (RFQs). Thus, it is important to realize that this filtering by Giovannoli is not the filtering by Sellers of buyers by the filtering of

sellers by themselves and that **the seller has absolutely no filter control over the buyer in Giovannoli.**

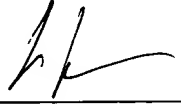
As stated in Giovannoli:

In addition, vendors may “deselect” themselves from quoting on certain types of RFQs by registering their preferences with the quotation system to avoid receiving RFQs of certain types. (Giovannoli, column 5, lines 15-18, emphasis added).

Because Giovannoli provides absolutely no filter control by the seller over the buyer of the present invention, but instead performs the converse, allowance of the subject application is respectfully requested.

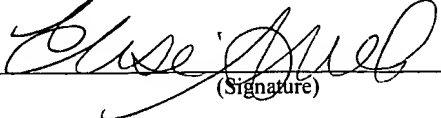
Respectfully submitted,

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(Signature)